IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.184 OF 2006

Dhanashree Hanumantrao Nimbalkar ...Appellant
Vs.
Ramrao Shankarrao Nimbalkar ...Respondent

Mr.Nitin Dhumal for the Appellant

CORAM: A.S.OKA, J.
DATED: APRIL 7,2006.

P.C.:

1. Heard Advocate for the Appellant-Plaintiff. Admittedly, the suit property was purchased by the mother-in-law of the Appellant-Plaintiff. The mother-in-law has two sons viz. Hanumant and Ramrao. Ramrao is the Respondent-Defendant. The Appellant is the wife of Hanumant and the said Hanumant is not made a party to the suit. The Trial Court decreed the suit for injunction filed by the present Appellant by holding that the Appellant was in legal possession of the suit property. The Appellate court has interfered to a limited extent. The Appellate Court held that the Appellant is in possession but as a licensee in respect of the suit land and therefore the Appellate Court modified the decree for injunction to the effect that the Respondent is restrained from obstructing the possession of the Appellant over the suit property otherwise than by due process of law.

2. The learned Advocate for the Appellant submitted that the Respondent has filed a suit for possession against the

Appellant in the year 1998 in which the possession of the Appellant has been admitted and that is the reason why the learned Trial Judge held that the Appellant is in lawful possession of the suit property.

3. The Appellate Court has held that the Appellant is in possession of the suit property. The Appellate Court found that the mother-in-law of the Appellant died intestate in the year 1994 and therefore her property devolved on her sons and daughters. The Appellate Court observed and in my view rightly, that on the date of death of the mother-in-law of the Appellant her husband was very much alive and therefore the Appellant-Plaintiff will not acquire any right, title or interest in the suit property. Therefore, the Appellate Court recorded a finding that in absence of any evidence on record to show existence of any right in favour of the Appellant in respect of the suit property, her possession is permissive in nature. That is the reason why the Appellate court granted a limited protection to the Appellant for protecting her possession.

4. Viewed with perspective of rights of the parties, no fault can be found with the decree passed by the Appellate court. There is no merit in the Appeal and the same is dismissed with no order as to costs.

Judge.